

# **BUSINESS LICENSING AMENDMENT ACT 1995**

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**No. 56 of 1995**

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**AN ACT to amend the —**

- *Auction Sales Act 1973;*
- *Debt Collectors Licensing Act 1964;*
- *Employment Agents Act 1976;*
- *Finance Brokers Control Act 1975;*
- *Land Valuers Licensing Act 1978;*
- *Motor Vehicle Dealers Act 1973;*
- *Real Estate and Business Agents Act 1978;*
- *Settlement Agents Act 1981; and*
- *Travel Agents Act 1985,*

**and for related purposes.**

[Assented to 20 December 1995.]

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Business Licensing Amendment Act 1995*.

### **Commencement**

**2.** (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Parts 2, 3, 5, 6, 8 and 9 come into operation on such day as is, or days as are respectively, fixed by proclamation.

(3) Parts 4, 7 and 10 come into operation on 1 January 1996.

## **PART 2 — AUCTION SALES ACT 1973**

### **Principal Act**

3. In this Part the *Auction Sales Act 1973*\* is referred to as the principal Act.

[\* *Reprinted as at 30 September 1984.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 14 and Act No. 46 of 1994.]*

### **Section 19 amended**

4. Section 19 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

“

(1) On granting a general or restricted licence, the magistrate shall fix the period, during which, subject to this Act, the licence is to have effect.

(1a) The period fixed under subsection (1) shall be a period that is —

(a) not less than 12 months; and

(b) not more than the prescribed period.

(1b) A general licence or a restricted licence may be renewed from time to time for the prescribed period.

(1c) In subsections (1a) and (1b) —

**“prescribed period”** means a period  
of not less than 12 months  
prescribed by the regulations.

”;

and

(b) in subsection (3) by inserting after “that licence expired,” the following —

“

and any amount prescribed by way of  
penalty for a late application is paid,

”.

### **Section 37 amended**

**5.** Section 37 of the principal Act is amended —

(a) by inserting after the section designation “**37.**” the subsection designation “(1)”; and

(b) by adding the following subsection —

“

(2) Subsections (1) and (2) of section  
45 of the *Interpretation Act 1984* apply in  
respect of fees prescribed under this Act  
despite sections 3 (3) and 45 (3) of that Act.

”.

**PART 3 — DEBT COLLECTORS LICENSING ACT 1964**

**Principal Act**

6. In this Part the *Debt Collectors Licensing Act 1964\** is referred to as the principal Act.

[\* *Reprinted as at 2 February 1972.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 56.]*

**Section 7 amended**

7. Section 7 of the principal Act is amended by repealing subsections (4) and (5).

**Section 9A inserted**

8. After section 9 of the principal Act the following section is inserted —

“

**Duration of licence**

**9A.** (1) On granting a licence, the Court shall fix the period during which, subject to this Act, the licence is to have effect.

(2) The period fixed under subsection (1) shall be a period that is —

(a) not less than 12 months; and

(b) not more than the prescribed period.

(3) If an application for the renewal of a licence is made under section 8 before the licence has expired the licence may be renewed for the prescribed period.

(4) If an application for the renewal of a licence is made under section 8 after, but within 28 days of, the day on which the licence expired, and any amount prescribed by way of penalty for a late application is paid, the Court may renew that licence for the prescribed period and in that event the renewal of the licence shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous licence expired.

(5) In this section —

**“prescribed period”** means a period of not less than 12 months prescribed by the regulations.

”.

### **Section 12A inserted**

**9.** After section 12 of the principal Act the following section is inserted —

“

#### **Change of particulars**

**12A.** (1) The holder of a licence shall give written notice to the Clerk of the Court in which the licence was granted or made of any change in the particulars specified in the licence as soon as practicable after that change takes place.

(2) A notice given under subsection (1) shall be accompanied by the relevant licence.

(3) The Clerk of the Court shall enter in the register, and endorse on the relevant licence, details of any change notified to the Clerk under subsection (1).

”.

**Section 26 amended**

**10.** Section 26 of the principal Act is amended —

- (a) by inserting after the section designation “**26.**” the subsection designation “(1)”; and
- (b) by adding the following subsection —

“

(2) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”.

## **PART 4 — EMPLOYMENT AGENTS ACT 1976**

### **Principal Act**

11. In this Part the *Employment Agents Act 1976\** is referred to as the principal Act.

[\* *Act No. 10 of 1976.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 68.]*

### **Section 13 amended**

12. Section 13 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

“

(1) On granting a licence, other than an interim licence, the licensing officer shall fix a period, not exceeding the period prescribed, during which the licence is to have effect.

(1a) Subject to section 25, unless sooner surrendered a licence, other than an interim licence, shall have effect for the period fixed under subsection (1).

(1b) A licence, other than an interim licence, may be renewed from time to time for the period prescribed.

”;

and



- (b) in subsection (2) by inserting after “licence expired,” the following —

“

and any amount prescribed by way of  
penalty for a late application is paid,

”.

### **Section 16 amended**

- 13.** Section 16 of the principal Act is amended by inserting after subsection (2) the following subsections —

“

(3) Where the holder of a licence notifies the licensing officer that the holder proposes to change the name or trade name or names or trade names specified in the licence, the licensing officer may amend the licence accordingly and authorize the holder to carry on business under that name or those names.

(4) The licensing officer shall not change a name or trade name specified in a licence unless the licensing officer is satisfied that the new name is the name of the applicant or that the applicant, or firm or body corporate on behalf of whom the licence is held, is the proprietor of the new trade name.

(5) A notice under subsection (2) or (3) shall be in writing and accompanied by the relevant licence.

(6) The licensing officer shall enter in the register details of any amendment made under subsection (2) or (3).

”.

## **Section 52 amended**

**14.** Section 52 of the principal Act is amended by adding after subsection (3) the following subsection —

“

(4) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”.

## **Transitional**

**15.** Despite the provisions of section 13 of the principal Act as amended by this Act, a licence, other than an interim licence, granted or renewed under the principal Act during 1995 is, subject to section 25 of the principal Act, upon expiry to be renewed under section 13 of the principal Act —

- (a) in the case of a licence granted or renewed between 1 January and 30 April 1995, for a period of one year;
- (b) in the case of a licence granted or renewed between 1 May and 31 August 1995, for a period of 2 years; and
- (c) in the case of a licence granted or renewed between 1 September and 31 December 1995, for a period of 3 years.

## **PART 5 — FINANCE BROKERS CONTROL ACT 1975**

### **Principal Act**

16. In this Part the *Finance Brokers Control Act 1975*\* is referred to as the principal Act.

[\* *Reprinted as at 2 April 1986.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 74.]*

### **Section 4 amended**

17. Section 4 of the principal Act is amended —

- (a) by deleting the definitions of “annual certificate”, “section” and “subsection”;
- (b) by inserting after the definition of “business” the following definition —

“

“**business certificate**” means a certificate  
granted under section 31;

”;

and

- (c) in the definition of “renewal” by deleting “an annual” and substituting the following —

“ a business ”.

### **Section 30 amended**

18. Section 30 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(4) A licensee ceases to be licensed if the licensee —

- (a) does not hold a current business certificate in respect of the licence; and

- (b) does not pay to the Board in accordance with the regulations the fee prescribed for the purposes of this subsection.

”.

### **Section 31 amended**

**19.** Section 31 of the principal Act is amended —

- (a) in subsection (1) by deleting “of 12 months commencing on the day on which it is granted” and substituting the following —

“      prescribed      ”; and

- (b) by repealing subsection (2) and substituting the following subsection —

“  
                 (2) Subject to this Act, a business certificate may, on application and payment of the prescribed fee, be renewed from time to time for the period prescribed.

”.

### **Section 32 amended**

**20.** Section 32 of the principal Act is amended by repealing subsection (1) and substituting the following subsections —

“

(1) If —

- (a) an application for renewal is made after, but within 28 days of, the day on which the business certificate expired; and
- (b) the prescribed fee and any amount prescribed by way of penalty for a late application are paid,

the business certificate may be renewed for the period prescribed.

(1a) A renewal under subsection (1) shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous business certificate expired.

”.

### **Section 36 amended**

**21.** Section 36 of the principal Act is amended —

- (a) by inserting after the section designation “36.” the subsection designation “(1)”; and
- (b) by inserting the following subsections —

“

(2) A licensee shall, within 14 days of ceasing to have a registered office give to the Registrar written notice of that fact and of the residential address of the licensee.

(3) A licensee who does not have a registered office shall, within 14 days of changing a residential address notified under subsection (2), give to the Registrar written notice of the changed address.

”.

### **Section 95 amended**

**22.** Section 95 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”.

**“Annual” deleted and “business” substituted**

**23.** (1) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “annual” wherever it occurs in those provisions and substituting the following —

“      business      ”.

**TABLE**

section 13 (b)  
section 26 (1)  
section 30 (3)  
section 31 (2)  
section 34 (3)  
section 35 (2) and (3)  
section 39 (1) and (2)  
section 40 (1)  
section 41 (1) (a)  
section 43 (1) (a)  
section 82 (1)  
section 83 (1) (c) and (2) (a) and (c) (i)  
section 84 (1) (b)

(2) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “an annual” wherever it occurs in those provisions and substituting the following —

“      a business      ”.

**TABLE**

section 19 (1) (a)  
section 30 (2)  
section 34 (2) and (4)  
section 35 (1), (3) and (4)  
section 40 (2) and (3)  
section 83 (3)  
section 84 (3)  
section 85 (1) and (3)  
section 93 (3)

**Transitional**

**24.** Despite sections 31 (2) and 32 (1) of the principal Act as amended by this Act, a business certificate renewed under the principal Act in the 12 month period immediately following the commencement of this Part is, subject to the principal Act, to have effect for a period of one year, 2 years or 3 years as is determined by the Registrar.

**PART 6 — LAND VALUERS LICENSING ACT 1978**

**Principal Act**

**25.** In this Part the *Land Valuers Licensing Act 1978\** is referred to as the principal Act.

[\* *Act No. 55 of 1978.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 116.]*

**Section 3 repealed**

**26.** Section 3 of the principal Act is repealed.

**Section 4 amended**

**27.** Section 4 of the principal Act is amended by deleting the definitions of “section” and “subsection”.

**Section 21 amended**

**28.** Section 21 of the principal Act is amended by repealing subsection (1) and substituting the following subsections —

“

(1) On granting a licence the Board shall fix a period, not exceeding the period prescribed, during which the licence is to have effect.

(1a) Subject to section 28, unless sooner surrendered a licence shall have effect for the period fixed under subsection (1) and may be renewed under section 22.

”



**Section 22 amended**

**29.** Section 22 of the principal Act is amended —

- (a) in subsection (1) by deleting “a further period of twelve months” and substituting the following —

“ a further prescribed period ”; and

- (b) by repealing subsection (2) and substituting the following subsections —

“

(2) If —

- (a) an application is made after, but within 28 days of, the day on which the licence expired; and

- (b) the prescribed fee and any amount prescribed by way of penalty for a late application are paid,

the Board shall renew that licence for the period prescribed.

(2a) A renewal under subsection (2) shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous licence expired.

”.

**Section 29A inserted**

**30.** After section 29 of the principal Act the following section is inserted —

“

**Change of particulars**

**29A.** (1) A licensed valuer shall give written notice to the Registrar of any change in the particulars

specified in the register in respect of that valuer as soon as practicable after that change takes place.

Penalty: \$250.

(2) The Registrar shall enter in the register details of any change notified under subsection (1).

”.

### **Section 36 amended**

31. Section 36 of the principal Act is amended by adding after subsection (2) the following subsection —

“

(3) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”.

### **Transitional**

32. Despite section 22 of the principal Act as amended by this Act, a licence renewed under the principal Act in the 12 month period immediately following the commencement of this Part is, subject to the principal Act, to have effect for a period of one year, 2 years or 3 years as is determined by the Registrar.

## **PART 7 — MOTOR VEHICLE DEALERS ACT 1973**

### **Principal Act**

**33.** In this Part the *Motor Vehicle Dealers Act 1973*\* is referred to as the principal Act.

[\* *Reprinted as at 1 February 1983.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 143.]*

### **Section 19 amended**

**34.** Section 19 of the principal Act is amended —

- (a) in subsection (1) by deleting “twelve months” and substituting the following —

“ the period prescribed ”;

- (b) by repealing subsections (2) and (3) and substituting the following subsections —

“

(2) When the Board grants a licence, other than by way of renewal, the licence may be granted for such period, not exceeding the period prescribed under subsection (1), as the Board thinks fit.

(3) If the holder of a licence applies to the Board for the renewal of that licence, pays the appropriate prescribed fee and, in the case of an expired licence, pays any amount prescribed by way of penalty for a late application —

- (a) not more than 2 months before the date on which the licence expires; and

- (b) not more than 28 days after the date on which the licence expires,

the Board may renew the licence for a further prescribed period.

(3a) The renewal of a licence shall take effect on the day immediately succeeding the day on which the licence would have expired had it not been renewed or shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous licence expired, as the case requires.

(3b) Without limiting the application of section 18 and subsection (5) of this section, the Board shall not renew a licence unless the applicant satisfies the requirements of section 15, 16, 17 or 17A, as the case requires.

”;

and

- (c) in subsection (4) by deleting “A licence” and substituting the following —

“ Subject to subsection (3a), a licence ”.

### **Section 24 amended**

**35.** Section 24 of the principal Act is amended by inserting after subsection (2) the following subsections —

“

(3) The holder of a salesman’s licence or a yard manager’s licence shall give written notice to the secretary of any change in the address of the place of

residence of the holder of that licence not later than 14 days after that change takes place.

(4) The secretary shall enter in the register details of any change notified under subsection (3).

”.

### Section 56 amended

**36.** Section 56 of the principal Act is amended by adding after subsection (2) the following subsection —

“

(3) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”.

### “Prescribed” deleted and “approved” substituted

**37.** The principal Act is amended as set out in the following Table —

TABLE

Provision amended	Amendment
s. 15 (2)	Delete “prescribed form” and substitute “ approved form ”.
s. 15 (3)	Delete “prescribed form” and substitute “ approved form ”.
s. 17A (2)	Delete “prescribed form” and substitute “ approved form ”.
s. 17A (3)	Delete “prescribed form” and substitute “ approved form ”.

### **Transitional**

**38.** Despite section 19 of the principal Act as amended by this Act, a licence granted or renewed under the principal Act during 1995 will, subject to the principal Act, upon expiry in 1996 be renewed —

- (a) in the case of a licence granted between 1 January and 30 April in any year, for a period of 3 years;
- (b) in the case of a licence granted between 1 May and 31 August in any year, for a period of 2 years; and
- (c) in the case of a licence granted between 1 September and 31 December in any year, for a period of one year.

**PART 8 — REAL ESTATE AND BUSINESS AGENTS  
ACT 1978**

**Principal Act**

**39.** In this Part the *Real Estate and Business Agents Act 1978*\* is referred to as the principal Act.

[\* *Reprinted as at 7 November 1985.*

*For subsequent amendments see 1994 Index to  
Legislation of Western Australia, Table 1, p. 180.]*

**Section 30 amended**

**40.** Section 30 of the principal Act is amended by repealing subsection (2a) and substituting the following subsection —

“

(2a) A licensee ceases to be licensed if the licensee —

- (a) does not hold a current triennial certificate in respect of the licence; and
- (b) does not pay to the Board in accordance with the regulations the fee prescribed for the purposes of this subsection.

”.

**Section 34 amended**

**41.** Section 34 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(3a) The Board may refuse to renew a triennial certificate if the licensee has not met prescribed educational requirements.

”.

**Section 48 amended**

**42.** Section 48 of the principal Act is amended —

- (a) in subsection (1) by deleting “a period of 12 months from the date specified therein as the day on which it first takes effect” and substituting the following —

“ the prescribed period ”; and

- (b) by repealing subsection (2) and substituting the following subsections —

“

(2) Subject to this Act a certificate of registration may be renewed for subsequent prescribed periods.

(3) An application to the Board for renewal of a certificate shall be —

- (a) accompanied by the prescribed fee and, in the case of an expired certificate, any additional amount prescribed by way of penalty for a late application; and

- (b) signed by the sales representative.

(4) The Board shall not renew a certificate of registration unless it is satisfied that the sales representative was employed by a licensee at the time of making the application or will be employed by a licensee upon the renewal of the certificate.

”.



**Section 49 amended**

**43.** Section 49 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

(1) If a certificate of registration is renewed after, but within 28 days of, the day on which it expired, the renewal shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which it expired.

”;

- (b) in subsection (2) —

- (i) by deleting “one month” and substituting the following —

“ 28 days ”; and

- (ii) by deleting “the period of 12 months” and substituting the following —

“ the prescribed period ”; and

- (c) in subsection (3) by deleting “one month” and substituting the following —

“ 28 days ”.

**Section 50 amended**

**44.** Section 50 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(3a) The Board may refuse to renew a certificate of registration if the applicant has not met prescribed educational requirements.

”.

**Section 51 amended**

**45.** Section 51 of the principal Act is amended —

- (a) by inserting after the section designation “**51.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“

(2) A registered sales representative shall give to the Registrar notice in writing of any change in the address of the registered sales representative as soon as practicable after that change takes place.

”.

**Section 113 amended**

**46.** Section 113 (2) of the principal Act is amended by deleting “\$15” and substituting the following —

“     \$45     ”.

**Section 133 amended**

**47.** Section 133 (2) of the principal Act is amended by inserting after “prescribed particulars” the following —

“

and shall record details of any change of those particulars notified under this Act

”.

## **Section 145 amended**

**48.** Section 145 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) Subsections (1) and (2) of section 45 of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3 (3) and 45 (3) of that Act.

”

## **Transitional**

**49.** Despite section 48 (2) of the principal Act as amended by this Act, a certificate of registration renewed under the principal Act in the 12 month period immediately following the commencement of this Part is, subject to the principal Act, to have effect for a period of one year, 2 years or 3 years as is determined by the Registrar.

**PART 9 — SETTLEMENT AGENTS ACT 1981**

**Section 30 amended**

**50.** Section 30 of the *Settlement Agents Act 1981*\* is amended by inserting after subsection (3) the following subsection —

“

(3a) A licensee ceases to be licensed if the licensee —

- (a) does not hold a current triennial certificate in respect of the licence; and
- (b) does not pay to the Board in accordance with the regulations the fee prescribed for the purposes of this subsection.

”.

[\* *Act No. 33 of 1981.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 195.]*

**PART 10 — TRAVEL AGENTS ACT 1985**

**Principal Act**

**51.** In this Act the *Travel Agents Act 1985*\* is referred to as the principal Act.

[\* *Act No. 120 of 1985.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 220.]*

**Section 19 amended**

**52.** Section 19 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

“

(1) A licensee shall pay to the Commissioner, in respect of the period prescribed for the purposes of this section, the prescribed fee for the licensee's licence.

(1a) Payment in respect of the period prescribed under subsection (1) shall be made —

- (a) not more than 28 days before the expiry of the current prescribed period; and
- (b) not more than 28 days after the expiry of the previous prescribed period,

and in the case of payment referred to in paragraph (b) shall be accompanied by the

amount, if any, prescribed by way of  
penalty for a late payment.

”;

(b) in subsection (2) —

(i) by deleting “a year, or part of a year” and  
substituting the following —

“

a period prescribed under subsection  
(1), or part of that period

”;

and

(ii) by deleting “that year” and substituting the  
following —

“ that period ”; and

(c) in subsection (3) by deleting “one month after the end  
of the year” and substituting the following —

“ 28 days after the end of the period ”.

### **Section 59 amended**

**53.** Section 59 (2) (d) of the principal Act is amended by  
inserting after “19 (1)” the following —

“ , (1a) ”.

### **Transitional**

**54.** The prescribed period under section 19 (1) of the principal  
Act as amended by this Act for the period commencing on an  
anniversary of a licence in 1996 is to be —

(a) if the licence was granted between 1 January and  
30 April in any year, a period of 3 years;

- (b) if the licence was granted between 1 May and 31 August in any year, a period of 2 years; and
  - (c) if the licence was granted between 1 September and 31 December in any year, a period of one year.
-